

AN ACT in relation to criminal law.

Be it enacted by the People of the State of Illinois,
represented in the General Assembly:

Section 5. The Criminal Code of 1961 is amended by
adding Article 37.5 as follows:

(720 ILCS 5/Art. 37.5 heading new)

ARTICLE 37.5. ANIMAL FIGHTING; FORFEITURE

(720 ILCS 5/37.5-5 new)

Sec. 37.5-5. Legislative declaration. The General Assembly finds that the forfeiture of real property that is used or intended to be used in connection with any show, exhibition, program or other activity featuring or otherwise involving a fight between an animal and any other animal or human or the intentional killing of any animal for the purpose of sport, wagering or entertainment, will have a significant beneficial effect in deterring the rising incidence of those activities within this State, as well as other crimes that frequently occur in partnership with animal fighting, such as illegal gambling, possession of narcotics, and weapons violations.

(720 ILCS 5/37.5-10 new)

Sec. 37.5-10. Applicability. A person who commits a felony violation of Section 4.01 of the Humane Care for Animals Act or a felony violation of Section 26-5 of this Code shall forfeit (i) any moneys, profits, or proceeds the person acquired in whole or in part, as a result of committing the violation and (ii) any real property or interest in real property that the sentencing court determines the person acquired in whole or in part, as a

result of committing the violation or the person maintained or used in whole or in part, to facilitate, directly or indirectly, the commission of the violation. The person shall forfeit any interest in, securities, or claim against, or contractual right of any kind that affords the person a source of influence over, any enterprise that the person has established, operated, controlled, conducted, or participated in conducting if the person's relations to or connection with the interest, security, or claim, or contractual right, directly or indirectly, in whole or in part, is traceable to any thing or benefit that the person has obtained or acquired as a result of a felony violation of Section 4.01 of the Humane Care for Animals Act or a felony violation of Section 26-5 of this Code.

(720 ILCS 5/37.5-15 new)

Sec. 37.5-15. Real property forfeiture.

(a) Following the arrest of a person or persons for any felony offense under Section 4.01 of the Humane Care for Animals Act or a felony offense under Section 26-5 of this Code, the State's Attorney of the county in which it occurred or the Attorney General may seek forfeiture of the real property associated with the offense, whether the real property belongs to the person organizing the show, exhibition, program, or other such activity described in subsections (a) through (g) of Section 4.01 of the Humane Care for Animals Act or Section 26-5 of this Code or to any other person participating in the activity described in subsections (a) through (g) of Section 4.01 of the Humane Care for Animals Act or Section 26-5 of this Code, who is related to the organization and operation of the activity or to any person who knowingly allowed the activities to occur on his or her premises.

(b) Real property includes any land, home, house,

apartment, building, garage, site, structure, or facility, whether enclosed or not, and any part or section of any land, home, house, apartment, building, garage, site, structure, or facility and any right title, or interest in the whole of any lot or tract of land and any appurtenances or improvements on the land. Real property includes, but is not limited to, any leasehold or possessory interest or beneficial interest in a land trust.

(720 ILCS 5/37.5-20 new)

Sec. 37.5-20. Procedure. Proceedings instituted under this Article shall be subject to and conducted in accordance with the procedures set forth in this Section.

(a) Notice to owner or interest holder. Whenever notice of pending forfeiture or service of a lis pendens is required under the provisions of this Article, the notice or service shall be given as follows:

(1) If the owner's or interest holder's name and current address are known, then by either personal service or mailing a copy of the notice by certified mail, return receipt requested, to that address. For purposes of notice under this Section if a person has been arrested for the conduct giving rise to the forfeiture, then the address provided to the arresting agency at the time of arrest shall be deemed to be that person's known address. Provided, however, if an owner or interest holder's address changes prior to the effective date of the notice of pending forfeitures, the owner or interest holder shall promptly notify the seizing agency of the change in address or, if the owner or interest holder's address changes subsequent to the effective date of the notice of pending forfeitures, the owner or interest holder shall promptly notify the State's Attorney or Attorney General of the change in address; or

(2) If the owner's or interest holder's address is not known, and is not on record as provided in paragraph (1), then by publication for 3 successive weeks in a newspaper of general circulation in the county in which the seizure occurred; or

(3) Notice served under this Article is effective upon personal service, the last date of publication, or the mailing of written notice, whichever is earlier.

(b) Probable cause hearing. In an action brought by the People of the State of Illinois under this Section, in which a restraining order, injunction, prohibition, lis pendens, or other action in connection with any property or interest subject to forfeiture under this Article is sought, the circuit court presiding over the trial of the person charged with a felony violation of Section 4.01 of the Humane Care for Animals Act or a felony offense under Section 26-5 of this Code shall first determine whether there is probable cause to believe that the person so charged has committed a felony offense under Section 4.01 of the Humane Care for Animals Act or a felony offense under Section 26-5 of this Code and whether the property or interest, is subject to forfeiture under this Article. To make that determination before entering an order in connection with that property or interest, the court shall conduct a hearing without a jury, at which the People must establish that there is: (i) probable cause that the person charged committed a felony offense under Section 4.01 of the Humane Care for Animals Act or a felony offense under Section 26-5 of this Code and (ii) probable cause that the property or interest may be subject to forfeiture under this Article. The hearing may be conducted simultaneously with a preliminary hearing, if the prosecution is commenced by information or complaint, or by motion of the People at any stage in the proceedings. The court may accept, at a preliminary hearing, (i) the filing of

an information charging that the defendant committed a felony offense under Section 4.01 of the Humane Care for Animals Act or a felony offense under Section 26-5 of this Code or (ii) the return of an indictment by a grand jury charging that the defendant committed a felony offense under Section 4.01 of the Humane Care for Animals Act or a felony offense under Section 26-5 of this Code as sufficient evidence of probable cause that the person committed the offense.

(1) Upon making a finding of probable cause, the circuit court shall enter a restraining order, injunction, lis pendens, or prohibition or shall take other action in connection with the property or other interest subject to forfeiture under this Article as is necessary to insure that the property is not removed from the jurisdiction of the court, concealed, destroyed, or otherwise disposed of by the owner of that property or interest before a forfeiture hearing under this Article. The State's Attorney shall file a certified copy of the restraining order, injunction, or other prohibition with the recorder or registrar of title of each county in which the property may be located. An injunction, restraining order, or other prohibition issued under this Section does not affect the rights of any bonafide purchaser, mortgagee, judgment creditor, or other lien holder that arose before the date the certified copy is filed.

(2) The court may at any time, on verified petition by the defendant, conduct a hearing to determine whether all or any portion of the property or interest, which the court previously determined to be subject to forfeiture or subject to any restraining order, injunction, lis pendens, prohibition, or other action, should be released. The court may in its discretion release the property to the defendant for good cause shown.

(720 ILCS 5/37.5-25 new)

Sec. 37.5-25. Forfeiture hearing. If real property is subject to seizure for felony violations under Section 4.01 of the Humane Care for Animals Act or felony violations under Section 26-5 of this Code, upon conviction, the State's Attorney or Attorney General may commence an action by petition in the sentencing court anytime following sentencing of the defendant. The sentencing court shall conduct a hearing to determine whether any property or property interest of the defendant, profits, or proceeds is subject to forfeiture under this Article. At the forfeiture hearing the People have the burden of establishing, by a preponderance of the evidence, that the property or property interest is subject to forfeiture.

(1) All property declared forfeited under this Article vests in this State on the date of the commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Any such property or proceeds subsequently transferred to any person remain subject to forfeiture and thereafter shall be ordered forfeited unless the transferee claims and establishes in a hearing under the provisions of this Article that the transferee's interest is exempt.

(2) If the State does not show by a preponderance of the evidence or a claimant has established by preponderance of evidence that the claimant has an interest that is exempt under this Article, the court shall order the interest in the property returned or conveyed to the claimant and shall order all other property forfeited to the State. If the State does show by a preponderance of the evidence that the property interest is subject to forfeiture, and the claimant does not establish by a preponderance of evidence that the claimant has an interest that is exempt under this

Article, the court shall order all real property forfeited to the State.

(3) A defendant convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding under this Article regardless of the pendency of an appeal from that conviction. However, evidence of the pendency of an appeal is admissible.

(720 ILCS 5/37.5-30 new)

Sec. 37.5-30. Exemptions from forfeiture.

(a) A property interest is exempt from forfeiture under this Article if its owner or interest holder establishes by a preponderance of evidence that the owner or interest holder:

(1) in the case of real property is not legally accountable for the conduct giving rise to the forfeiture, or did not solicit, conspire, or attempt to commit the conduct giving rise to the forfeiture; and

(2) had not acquired and did not stand to acquire proceeds from the conduct giving rise to its forfeiture other than as an interest holder in an arms length commercial transaction; and

(3) does not hold the property for the benefit of or as a nominee for any person whose conduct gave rise to its forfeiture, and, if the owner or interest holder acquired the interest through any such person, the owner or interest holder acquired it as a bona fide purchaser for value without knowingly taking part in the conduct giving rise to the forfeiture; and

(4) that the owner or interest holder acquired the interest:

(i) before the commencement of the conduct giving rise to its forfeiture and the person whose

conduct gave rise to its forfeiture did not have the authority to convey the interest to a bona fide purchaser for value at the time of the conduct; or

(ii) after the commencement of the conduct giving rise to its forfeiture, and the owner or interest holder acquired the interest as a mortgagee, secured creditor, lienholder, or bona fide purchaser for value without knowledge of the conduct which gave rise to the forfeiture; and

(iii) in the case of real estate, before the filing in the office of the recorder of the county in which the real estate is located of a notice of a lis pendens notice.

(5)(A) With respect to a property interest in existence at the time the illegal conduct giving rise to the forfeiture took place,

(i) did not know of the conduct giving rise to forfeiture; or

(ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

(B)(i) For the purposes of this paragraph (5), ways in which a person may show that he or she did all that reasonably could be expected may include demonstrating that he or she, to the extent permitted by law:

(I) gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and

(II) in a timely fashion revoked or made a good faith attempt to revoke permission for those engaging in such conduct to use the

property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

(ii) A person is not required by this subparagraph to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.

(b) If the court determines, in accordance with this Section, that an innocent owner has a partial interest in property otherwise subject to forfeiture, or a joint tenancy or tenancy by the entirety in that property, the court may enter an appropriate order:

(1) severing the property;

(2) transferring the property to the State with a provision that the State compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or

(3) permitting the innocent owner to retain the property subject to a lien in favor of the State to the extent of the forfeitable interest in the property.

(c) In this Section, the term "owner":

(1) means a person with an ownership interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage, recorded security interest, or valid assignment of an ownership interest; and

(2) does not include:

(i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest

in the property seized; or

(iii) a nominee who exercises no dominion or control over the property.

(720 ILCS 5/37.5-35 new)

Sec. 37.5-35. Settlement of claims. Notwithstanding other provisions of this Article, the State's Attorney and a claimant of seized property may enter into an agreed upon settlement concerning the property subject to forfeiture in such an amount and upon such terms as are set out in writing in a settlement agreement.

(720 ILCS 5/37.5-40 new)

Sec. 37.5-40. Judicial review. If property has been declared forfeited under this Article, any person who has an interest in the property declared forfeited may, within 30 days of the effective date of the notice of the declaration of forfeiture, file a claim and cost bond and apply to the court for reconsideration based upon his or her interest in the property.

(720 ILCS 5/37.5-45 new)

Sec. 37.5-45. Disposal of property. Real property taken or detained under this Section is not subject to replevin, but is deemed to be in the custody of the Director of State Police subject only to the order and judgments of the circuit court having jurisdiction over the forfeiture proceedings and the decisions of the State's Attorney or Attorney General under this Article.

(1) When property is forfeited under this Article, the Director of State Police shall sell all such property and shall distribute the proceeds of the sale, together with any moneys forfeited or seized in accordance with paragraph (2).

(2) All monies and the sale proceeds of all other property forfeited and seized under this Article shall be distributed as follows:

(A) 65% shall be distributed to the local, municipal, county, or State law enforcement agency or agencies that conducted or participated in the investigation resulting in the forfeiture. The distributions shall bear a reasonable relationship to the degree of direct participation of the law enforcement agency in the effort resulting in the forfeiture, taking into account the total value of the property forfeited and the total law enforcement effort with respect to the violation of the law upon which the forfeiture is based.

(B) 12.5% shall be distributed to the Office of the State's Attorney of the county in which the prosecution resulting in the forfeiture was instituted for use in the enforcement of laws, including animal fighting.

(C) 12.5% shall be distributed to the Illinois Department of Agriculture for use of expenses incurred in the investigation, prosecution, and appeal of cases arising under laws governing animal fighting.

(D) 10% shall be retained by the Department of State Police for expenses related to the administration and sale of seized and forfeited property.

Section 99. Effective date. This Act takes effect upon becoming law.